IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1514 of 2007

Nagammal .. Petitioner

Vs

1. State of Tamil Nadu,
   Rep. by its Secretary to Govt.,
   Prohibition and Excise Department
   Fort St.George, Chennai.

2. The District Magistrate and
   District Collector,
   Vellore District, Vellore. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.C.C.Chellappan

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Made by P.D.DINAKARAN,J.)

Aggrieved by the order of detention dated 8.10.2007 made in C3.D.O.No.83/2007 passed by the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) to detain one Rajamani, branding him as a Bootlegger, the petitioner, who is the wife of the detenu, filed the above petition seeking to quash the order of detention and to direct the respondents to produce the detenu, now confined at Central Prison, Vellore, before this Court and set him at liberty.

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2. On the morning of 29.8.2007, while the Inspector of Police, Arcot Town Police Station and police party conducted prohibition raid in the foothills situated at Melkuppam Road, the detenu was found selling illicit arrack to a person and on seeing the police party, the person who purchased the liquor escape from the place, but the detenu was encircled by the police and was arrested. The confession statement of the detenu admitting the offence was recorded and samples of illicit arrack were seized. A case in Crime No.550 of 2007 for offences under Sections 4(i)(aaa), 4(1-A)(ii) was registered on the file of Arcot Town Police Station and the detenu was produced before District Munsif cum Judicial Magistrate, Arcot, who remanded him to judicial custody. The samples of arrack was found admixed with 6.1 mgms.% w/v of atropine as per chemical analysis report.

3. The second respondent, taking note of the above ground case and finding that there are four adverse cases of similar nature on the file of same police station in Crime Nos.1282/06, 176/07, 275/07 and 483/07, having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order and health, ordered his detention dubbing him as a 'Bootlegger'.

4. The learned counsel for the petitioner inviting our attention to the FIR and arrest memo, contends that there is no possibility of mentioning the crime number in the memo of arrest showing the time of arrest of the detenu at 9.00 a.m. on 29.8.2007, when the information itself was received at the police station only at 11.30 a.m. as per the FIR and therefore, the said discrepancy vitiates the order of detention.

5. We have heard the learned Additional Public Prosecutor on the above point and also perused the materials placed before us.

6. It is seen from the paper book placed before us that in the memo of arrest, found at page 22, the detenu was shown to have been arrested at about 9.00 a.m. on 29.8.2007 and it also contains the crime number as Cr.No.550 of 2007. But, in the F.I.R. found at page 19, it is stated that the information itself was received at the police station only at 11.30 a.m. If that be so, the detaining authority has not applied their mind as to how the crime number of the case could be mentioned in the memo of arrest, when the information itself was received by the police at a later point of time, which, in our considered opinion, vitiates the order of detention.

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In the result, the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sra

To

1. The Secretary to Government of Tamil Nadu
   Prohibition & Excise Department
   Fort St. George, Chennai 9.

2. The District Magistrate and
   District Collector of
   Vellore District, Vellore.

3. The Superintendent,
   Central Prison, Vellore.

4. The Public Prosecutor
   High Court, Madras.

5.The Joint Secretary to Govt. of Tamil Nadu
Public (Law and Order) Department,
Fort St. George, Chennai-9.

+1cc to Mr.C.C.Chellappan, Advocate Sr 73479

BV (CO)
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